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SIPDIS

STATE FOR AC/CB, NP/CBM, VC/CCB, L/ACV, IO/S  
SECDEF FOR OSD/ISP  
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COMMERCE FOR BIS (GOLDMAN)  
NSC FOR JOECK  
WINPAC FOR LIEPMAN

E.O. 12958: N/A

TAGS: [PARM](#) [PREL](#) [CWC](#)

SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC) - OCTOBER 1  
CONSULTATION ON RABTA CONVERSION

This is CWC-115-04.

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SUMMARY  
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1. (U) At the October 1 consultations on the Libyan proposal to make a technical change to permit conversion of the Rabta facility, the overwhelming number of attendees voiced strong support. A limited number of "usual suspects" raised questions, in particular Pakistan, but also Russia, India and Iran, primarily questioning the legal basis for the proposal. While it should be possible to overcome these concerns, it will require significant work in the Hague and in capitals in the run-up to the Oct. 12-15 Executive Council (EC) session where a decision must be taken regarding this proposal. End Summary.

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STATEMENTS FROM THE OPCW LEADERSHIP  
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2. (U) On October 1, at the prompting of the EC Chairman and other States Parties, informal consultations, chaired by the Brazilian Ambassador, were held to discuss the Libyan proposal to make a technical change to the CW Convention that would permit Libya and future States Parties to seek conversion of former CW production facilities for purposes not prohibited by the CWC. The Technical Secretariat (TS) led off the consultations with useful statements by the Director-General (DG), Legal Advisor, Director of Verification, and Director of the Policy-Making Organs.

3. (U) DG Pfirter made a forceful statement emphasizing his "active engagement" in preparing the positive TS evaluation of the proposal, the conclusions of which were "unequivocal." He emphasized that the proposal is "clearly a technical change," in that it does not alter the basic principles or rights of the CWC and does not impact current conversion activities (i.e. Russia), and approving the proposal was needed to remove a disincentive for others to join. The DG stressed that the EC must make a recommendation at its upcoming session to either approve or reject the proposal, and could not defer the decision to the November Conference of States Parties. (Comment: This last point was made at the prompting of the U.S. and UK to head off an expected Pakistani proposal to send the issue to the CSP.)

4. (U) The Legal Advisor (Ambassador Onate), taking a more nuanced position than the DG and sticking closer to the actual text of the TS evaluation, noted that the CWC does not clearly define the difference between a formal amendment and a technical change, and that it was left to, and the responsibility of, the EC to determine the "viability" of the proposal (i.e., does it satisfy the criteria for a technical change contained in Article XV, para 4). Nevertheless, Onate reiterated the characteristics of the proposal that would suggest the technical change process is appropriate. He also stated that pursuing the proposed fix through the technical change process was consistent with international law and the principle of "dynamic interpretation" of treaty provisions.

5. (U) The Director of Verification (Horst Reeps) affirmed that the proposed technical change would not change the verification activities related to CWP conversion, and thus pose no risk to the object and purpose of the CWC in this area. The Director of Policy-Making Organs (Sylwin Gizowski) stated that the initial steps of the technical change process have been followed in an appropriate manner and that the EC is obligated to examine the proposal and make its recommendation at its next session. He noted that this process had been previously used in 1999 concerning saxitoxin.

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STATEMENTS OF SUPPORT FOR LIBYA  
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16. (U) There was a significant turn out from States Parties, with no fewer than 43 delegations in attendance. The Libyans made a brief opening statement emphasizing the need to make a change that addresses the strict time limit on completing conversion contained in paragraph 72, and that the proposal was important for both humanitarian reasons and to promote universality. Nineteen delegations, from a broad geographic distribution, made statements offering clear support for the proposed technical change, specifically: Algeria (co-sponsor), Morocco (co-sponsor), Sudan (co-sponsor and speaking for Africa Group), Tunisia (co-sponsor), Japan (co-sponsor), South Korea, Czech Republic, Poland (co-sponsor, non-EC), Argentina, Brazil, Austria (non-EC), Italy (co-sponsor), Netherlands, Norway, Spain, Switzerland (non-EC, WEOG coordinator), Turkey (co-sponsor, non-EC), UK (co-sponsor), and the U.S. (co-sponsor).

17. (U) (Note: While offering strong support for making a technical change, Amb. Vogelaar of the Netherlands made an unhelpful query about the desirability of having a firm time limit in the text for States Parties to submit conversion requests -- current text leaves it up to the EC to decide. After the meeting del rep explained why such a time limit would not be needed in practice, but more importantly raised the concern about possibly opening up the proposal for redrafting and giving the impression of lack of unity within the WEOG. Additionally, the Dutch, current President of the EU, did not make an expected statement about EU support for the technical change, though Vogelaar offered that he is in the process of clearing a formal statement for the upcoming EC.)

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STATEMENTS OF CONCERN OR SKEPTICISM  
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18. (U) A handful of other delegations made less helpful interventions, ranging from vague to outright hostile.

--Pakistan: The Pakistani rep (Malik Azhar Ellahi) made the most negative statement regarding the technical change. He prefaced his statement by saying that Pakistan supports the purpose of the proposal (to permit conversion) and that Islamabad is still considering the proposal in light of the recently issued evaluation from the DG. However, there are a number of "questions" that need to be answered. He opined that many States Parties appear to be moving forward as if the final decision is "pre-judged" and that further discussions would be necessary. Based on clearly uninformed analysis, he questioned whether "conversion" was even necessary given activities taken prior to Libya joining the CWC to shift the Rabta facility to peaceful production. In a crass effort to divide North/South support for the proposal, he requested assurances that the proposed drug production, given the involvement of western companies (e.g., Italian firms), will be driven by altruistic purposes, not profit, in effect questioning the credibility of Libya's stated intentions. The core of his argument was that the proposed change is more than a "technical change" and that another process should be used to pursue it. Contrary to the assertions of the DG, the Pakistani delegate insisted that the proposal impacts the basic object and purpose of the CWC by changing a deadline that was established for specific reasons by the drafters of the CWC. He offered that seeking a formal amendment would be difficult and not desirable for most States Parties, and so raised the possibility (without appearing to recognize the obvious contradictions in his position) that other "novel ways" to address this issue could be found. However, he offered no specifics.

--Russia: The Russian delegation expressed support for permitting Libya, and any future States Parties, to convert former CWPFFs, but their "initial analysis" raised the question of whether the technical change process is appropriate since it modifies a treaty deadline, as well as procedures for establishing a deadline for submitting the conversion request (Part V, paras 65-66). Clearly not wanting to push for an amendment, the Russians recommended that other options be considered, including the possibility of some kind of decision by the Conference short of an amendment that would allow Libyan conversion. The Russians indicated that these discussions, along with the recent DG paper would be taken into account as Moscow develops its "final position." (Note: The Russian Ambassador, who was not at the consultations, previewed the Russian position in a cordial bilateral meeting on the previous day at the Russian Embassy. He gave the impression that the Russian position was still in flux, with some division of legal opinion in Moscow and that the DG paper had not been factored in yet.)

--India: The Indian representative prefaced his statement by stating clearly that the proposal was still being considered in capital and that India "sympathizes" with African states' interest, but then proceeded to make a series of unhelpful comments. The del rep said he "needed to be convinced" that

this was in fact a "technical change," and asked for clearer views from the TS, as well as the thinking behind the original CWC drafters establishing a six-year deadline. He also noted that the technical change for saxitoxin was less complex than this, but nevertheless took almost two years to finalize. He also (incorrectly) asserted that under this process consideration stops with the EC, and that the CSP should take a decision. (Note: After EC approval, all/all States Parties are given 90 days to raise an objection, which, if made, sends the issue to be taken up by the CSP.)

--Iran: The Iranian delegation stated that they support the objective of the proposal and that the issue is still being considered in capital. He believed that making any sort of formal change to the CWC should be avoided and wanted greater assurances that the technical change process is the correct one for this instance. He offered an alternative that in effect amounted to an "interpretation" of the CWC, namely Article V, para 13, and Part V, paras 65-66, that would override the restriction in Part V, para 72.

--Mexico: The Mexican delegation indicated the proposal was still being considered in capital, but they supported its intention, and viewed the paper with a "positive eye."

--Germany: Despite assurances provided by the German PermRep the previous day, the visiting official from Berlin (Peter Beerwerth) offered a lukewarm statement of support, indicating that the proposal was still being considered in capital. After the meeting, Beerwerth said that they did not want to get out too far ahead until it had been presented to "ministers." (Note: Beerwerth may have been partially motivated by previous delays in Libya paying compensation for the bombing of the LaBelle disco, and appeared unaware of media reports that the initial payment had been made the previous day.)

9. (U) Prompted by questions from the U.S. and UK about the existence of "other options," the Legal Advisor could see no other legal alternative that would permit conversion other than those provided for in Article XV, namely either a formal amendment or a technical change. He reasserted that it is ultimately up to the EC to determine if the technical change process is appropriate. Specifically in response to Iran, he voiced the concern that their idea of trying to interpret away the problem would set a dangerous precedent.

10. (U) States Parties that attended, but made no comments: Kenya (co-sponsor), Nigeria, South Africa (co-sponsor), China, Malaysia, UAE (non-EC), Bosnia (non-EC), Bulgaria (non-EC), Romania (non-EC), Cuba, Peru, Canada (non-EC), Denmark (non-EC), Finland (non-EC), New Zealand, and Sweden (non-EC). (France was the most notable no-show at the meeting.)

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NEXT STEPS  
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11. (U) Overall, the consultations went about as expected, with strong support offered by many, and usefully flushing out questions from the "usual suspects," though all of the latter indicated that the proposal is still being considered in capital. Libyan, Italian, UK and U.S. dels agreed that aggressive diplomacy in The Hague and in capitals is needed in the coming week before the EC to give the proposal the best chance of a getting consensus approval at the EC. Specifically:

--Pakistan: the Pakistani rep appears to be "free-lancing" on this issue, without specific guidance from capital, as has been his habit on previous occasions. Delegations agreed to recommend to capitals that U.S., UK and Italy demarche Islamabad, while Libya will raise the issue with the Pakistani Embassy in Tripoli. UK and Libyan dels will work with the TS to directly address questions raised by the Pakistani del.

--Russia: the Russian del appears to be working from preliminary, but not definitive, instructions from capital. Delegations recommend that U.S., UK and Italy demarche Moscow, while the U.S. del will continue to follow-up with the local del.

--Iran: the UK and Libya will follow-up with Iranian del, with possible involvement of TS.

--India: because of preparation associated with an upcoming India-EU summit, the Indian del has been, and will likely continue to be, unable to give this issue much attention. Delegations recommend that U.S., UK and Italy demarche New Delhi, while the U.S. del will continue to follow-up with the local delegation, emphasizing the need for a clear position for the upcoming EC.

--Mexico: The U.S. delegation will follow-up with the Mexican del to confirm its position and will inform

Washington if a demarche to capital is needed.

--Germany: The U.S. and UK delegations have already expressed concern to the German del regarding its lukewarm statement, and will continue to do so in the coming week. (Note: A German del rep offered assurances that the FRG will "be there for us in the end.") The U.S. del has informally contacted Embassy Berlin to follow-up on the status of German deliberations and the UK will formally demarche Berlin.

112. (U) Javits sends.  
SOBEL